

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DANIEL P. OSWALD,

Plaintiff,

v.

WILLIAM POLLARD, ET AL.,

Defendants.

ORDER

Case No. 15-cv-291-wmc

Plaintiff Daniel P. Oswald, a prisoner in the custody of the Wisconsin Department of Corrections, has submitted a proposed civil action under 42 U.S.C. § 1983. Plaintiff has filed a certified copy of an inmate trust fund account statement in support of the motion for leave to proceed without prepaying the fee. After considering the motion and supporting documentation, the court concludes that plaintiff qualifies for indigent status.

Even when a prisoner litigant qualifies for indigent status, the prisoner litigant must pay a portion of the fee returned by the formula set forth in 28 U.S.C. § 1915(b)(1). Using information for the relevant time period from plaintiff's trust fund account statement, I conclude plaintiff's initial partial filing fee to be \$145.34. For this case to proceed, plaintiff must submit this amount on or before June 1, 2015.

Plaintiff requests to use his release account funds to pay the entire fee for filing this case. (Dkts ##1, 5). However, with the exception of initial partial payments, federal courts lack the authority to tell state officials whether and to what extent a prisoner should be able to withdraw money from a release account. Therefore, plaintiff cannot use the release account funds to pay the entire filing fee.

Finally, plaintiff has filed a motion for court assistance in recruiting counsel. (Dkt. #3). Until the court has screened the complaint, a motion requesting the assistance of volunteer counsel is premature. Plaintiff may renew this request after this case has been screened as required by the Prison Litigation Reform Act, 28 U.S.C. § 1915A.

ORDER

IT IS ORDERED that,

1. Plaintiff Daniel P. Oswald is assessed \$145.34 as an initial partial payment of the \$350.00 fee for filing this case. Plaintiff is to submit a check or money order made payable to the clerk of court in the amount of \$145.34 or advise the court in writing why plaintiff is not able to submit the assessed amount on or before June 1, 2015.

2. If, by June 1, 2015, plaintiff fails to make the initial partial payment or show cause for failure to do so, plaintiff will be held to have withdrawn this action voluntarily and the case will be closed without prejudice to plaintiff's filing this case at a later date.

3. Plaintiff's request to use his release account funds to pay the entire filing fee in this case (Dkts #1, 5) is DENIED. If plaintiff does not have enough money to make the \$145.34 initial partial payment from his regular account, plaintiff should arrange with prison authorities to pay the remainder from his release account.

4. Plaintiff's motion for assistance in the recruitment of counsel (Dkt. #3) is DENIED without prejudice.

5. No further action will be taken in this case until the clerk's office receives plaintiff's initial partial filing fee as directed above and the court has screened the complaint

as required by the PLRA, 28 U.S.C. § 1915A. Once the screening process is complete, a separate order will issue.

Entered this 18th day of May, 2015.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge